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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

FISCHER, ANDREW J

ART UNIT	PAPER NUMBER
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3627

DATE MAILED: 07/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/841,320

Applicant(s)

NOTANI ET AL.

Examiner

Andrew J. Fischer

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on 11 May 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) 11-24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 25-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Acknowledgements***

1. Applicants' amendment filed May 3, 2005 is acknowledged. Accordingly, claims 1-29 remain pending.
2. In response to the "First Restriction Requirement" mailed September 28, 2004, Applicants elected Group I (claims 1-10 and 25) with traverse. Because Inventions I and III were linked, Group III (claims 15-24) was also examined.
3. Claims 11-24 were withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on October 28, 2004.
4. All references in this Office Action to the capitalized versions of "Applicants" refers specifically the Applicants of record. References to lower case versions of "applicant" or "applicants" refers to any or all patent "applicants." Unless expressly noted otherwise, references to "Examiner" in this Office Action refers to the Examiner of record while reference to or use of the lower case version of "examiner" or "examiners" refers to examiner(s) generally.
5. This Office Action is written in OACS. Because of this, the Examiner is unable to control formatting, paragraph numbering, font, spelling, line spacing, and/or other word processing issues. The Examiner sincerely apologies for these errors.

### ***Claim Rejections - 35 USC §112 2<sup>nd</sup> Paragraph***

6. The following is a quotation of the 2<sup>nd</sup> paragraph of 35 U.S.C. §112:

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The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 1-10 and 15-29 are rejected under 35 U.S.C. §112, 2<sup>nd</sup> paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims are replete with errors. Some examples follow.

- a. In claims 1, 15, 24, and 25 are indefinite because the phrase “capacity extreme” is indefinite. Moreover, how one of ordinary skill in the art “resolves at least a portion of the capacity extreme” is unclear since “a portion of the capacity extreme” is in effect—virtually *any* capacity.
- b. Also in claim 1, the phrase “of a resolution expected to be available using the selected service” is indefinite because it is unclear what the phrase is modifying.
- c. In claim 7, it is unclear if “an action” is the same or different from the “receiving” actions recited in claim 1.
- d. Also in claim 7, it is unclear if “another entities” includes “one or more other entities” as recited in claim 1.
- e. In claim 8, it is unclear if the “multiple services” includes the “at least one service” recited in claim 1. Also, is “a first service” as recited in claim 8 the same or different from “at least one service” as recited in claim 1.
- f. In claim 26, it is unclear if “these enterprises” is the same as “a plurality of enterprises.”
- g. In claim 25 and if Applicants intend to invoke under 35 U.S.C. §112, 6<sup>th</sup> paragraph, the corresponding structure of the “means for receiving” is unclear. To be clear, this is an alternative rejection that assume Applicants intend to invoke 35

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U.S.C. §112, 6<sup>th</sup> paragraph in claim 25. If Applicants do not intend to invoke 35

U.S.C. §112, 6<sup>th</sup> paragraph in claim 25, this particular rejection will be withdrawn.

h. In claims 26-29, it is unclear if “an action” as recited in *e.g.* claim 26, line 9 is the same as the “receive[ing]” as recited in line 3. The same holds true for claims 27-29.

i. Also in claim 26-29, it is extremely unclear how many separate entities are present in the claim. In claim 26, it is unclear if “other entities” as recited in line 11 includes any or all of the “plurality of enterprises” as recited in lines 3 and 4. And likewise, would the “another entity” in the last line include any or all of the “plurality of enterprises” as recited in lines 3 and 4 or even the “one or more other entities” recited in line 11. The same holds true for claims 27-29.

### ***Claim Rejections - 35 USC §103***

8. The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office Action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1-10, and 25-29 as understood by the Examiner, are rejected under 35 U.S.C. §103(a) as being unpatentable over Huang et. al. (U.S. 6,151,582 (“Huang”) in view of Dobler’s Production and Inventory Control Handbook, 3<sup>rd</sup> Ed., (“Greene”). Huang discloses a planning application which is a supply chain planning engine 160; a manager application; status data as demand data 148; and resolving at least a portion of the capacity extreme (Huang optimizes production) Huang does not directly disclose precisely as claimed an attempt at least

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a portion of the capacity. Greene in Chapter 10 directly teaches “attempts” at “resolving” capacity issues.

Therefore it would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify Huang as taught by Greene to include attempts at least a portion of the capacity extreme through interactions. Such a modification would have helped improved decision to accomplish the production plans as the most affordable costs.

10. Claims 1-10 and 25-29 as understood by the Examiner, are rejected under 35 U.S.C. §103(a) as being unpatentable over Huang et. al. (U.S. 6,151,582 (“Huang”) in view of Dobler’s Purchasing and Supply Management, Text & Cases (“Dobler”). Huang discloses as discussed above but does not directly disclose precisely as claimed “an attempt” at a portion of the capacity. Dobler’s directly teaches capacity requirements planning (“CRP”) in Chapter 22.

Therefore it would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify Huang as taught by Dobler to include an attempt at to resolve at least a portion of the capacity extreme. Such a modification would have helped improved decision to accomplish the production plans as the most affordable costs.

11. The Examiner concludes that Applicants have decided not to be their own lexicographer by indicating and defining claim limitations to have meanings other than their ordinary and accustomed meanings. To support this position, the Examiner relies on the following factual findings. First and as noted in the previous Office Action,<sup>1</sup> the Examiner has carefully reviewed the specification and prosecution history and can not locate any lexicographic definition(s). Second, the Examiner finds that not only have Applicants not pointed to definitional statements in their specification or prosecution history, Applicants have

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<sup>1</sup> See the First Non Final Office Action mailed January 31, 2005, Paragraph No. 12.

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also not pointed to a term or terms in a claim with which to draw in those statements<sup>2</sup> with the required clarity, deliberateness, and precision.<sup>3</sup> Third, after receiving express notice in the previous Office Action of the Examiner's position that lexicography is not invoked,<sup>4</sup> Applicants have not pointed out the "supposed errors" in the Examiner's position regarding lexicography invocation in accordance with 37 C.F.R. §1.111(b) (*i.e.* Applicants have not argued lexicography is invoked). Finally and to be sure of Applicants' intent, the Examiner also notes that Applicants have declined the Examiner's express invitation<sup>5</sup> to be their own lexicographer.<sup>6</sup> It remains the Examiner's position that these requirements were reasonable.<sup>7</sup>

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<sup>2</sup> "In order to overcome this heavy presumption in favor of the ordinary meaning of claim language, it is clear that a party wishing to use statements in the written description to confine or otherwise affect a patent's scope must, *at the very least*, point to a term or terms in the claim with which to draw in those statements. [Emphasis added.]" *Johnson Worldwide Assocs. v. Zebco Corp.*, 175 F.3d 985, 989, 50 USPQ2d 1607, 1610 (Fed. Cir. 1999).

<sup>3</sup> "The patentee's lexicography must, of course, appear 'with reasonable clarity, deliberateness, and precision' before it can affect the claim." *Renishaw PLC v. Marposs Societa' per Azioni*, 158 F.3d 1243, 1249, 48 USPQ2d 1117, 1121 (Fed. Cir. 1998) citing *In re Paulsen*, 30 F.3d 1475, 1480, 31 USPQ2d 1671, 1674 (Fed. Cir. 1994).

<sup>4</sup> See again the First Non Final Office Action, Paragraph No. 12.

<sup>5</sup> Id.

<sup>6</sup> See *e.g. Fuji Photo Film Co. v. ITC*, 386 F.3d 1095, 72 USPQ2d 1769, 1773 (Fed. Cir. 2004) (noting that applicants' failure to correct the examiner's characterization of an element of claim interpretation is nevertheless an indication of how a claim should be interpreted since applicant declined the examiner's express invitation to correct a possible error in claim interpretation: "applicant's attention was called to the examiner's interpretation of [how the element was interpreted by the examiner, and] applicant was invited to correct the examiner's interpretation—an invitation the applicant did not accept.").

<sup>7</sup> The Examiner's requirements on this matter were reasonable on at least two separate and independent grounds. First, the Examiner's requirements were simply an express request for clarification of how Applicants intend their claims to be interpreted so that lexicography (or even an *attempt* at lexicography) by Applicants was not inadvertently overlooked by the Examiner. Second, the requirements were reasonable in view of the USPTO's goals of compact

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Accordingly and for due process purposes, the Examiner gives notice that for the remainder of the examination process (and except for those phrases that successfully invoke 35 U.S.C. §112 6<sup>th</sup> paragraph), the heavy presumption in favor of the ordinary and accustomed meaning is not overcome; the claims therefore continue to be interpreted with their “broadest reasonable interpretation . . . .” *In re Morris*, 127 F.3d 1048, 1054, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997).<sup>8</sup> The Examiner now relies heavily and extensively on this interpretation.<sup>9</sup> Unless expressly noted otherwise by the Examiner, the preceding claim interpretation principles in this paragraph apply to all examined claims currently pending.

12. With respect to claims 1-10 and 27, the Examiner respectfully reminds Applicants that: “A system is an apparatus.” *Ex parte Fressola* 27 USPQ2d 1608, 1611 (B.P.A.I. 1993)(citations omitted). Additionally, “[c]laims in apparatus form conventionally fall into the 35 U.S.C. §101 statutory category of a ‘machine.’” *Ex parte Donner*, 53 USPQ2d 1699, 1701 (B.P.A.I. 1999)(unpublished), (Paper No. 34, page 5, issued as U.S. Patent 5,999,907).

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prosecution, productivity with particular emphasis on reductions in both pendency and cycle time, and other goals as outlined in the USPTO’s The 21<sup>st</sup> Century Strategic Plan, February 3, 2003 available at [www.uspto.gov/web/offices/com/strat21/index.htm](http://www.uspto.gov/web/offices/com/strat21/index.htm) (last accessed July 20, 2005).

<sup>8</sup> See also *In re Bass*, 314 F.3d 575, 577, 65 USPQ2d 1156, 1158 (Fed. Cir. 2002) (“In examining a patent claim, the PTO must apply the broadest reasonable meaning to the claim language, taking into account any definitions presented in the specification. Words in a claim are to be given their ordinary and accustomed meaning unless the inventor chose to be his own lexicographer in the specification”) (citations omitted); *In re Etter*, 756 F.2d 852, 858, 225 USPQ 1, 5 (Fed. Cir. 1985) (en banc); and MPEP §§ 2111 and 2111.01.

<sup>9</sup> See 37 C.F.R. §1.104(c)(3) which states in part: “the examiner may rely upon admissions by applicant . . . as to *any matter* affecting patentability . . . . [Emphasis added.]”



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Therefore, it is the Examiner's position that Applicants' system claims are "product," "apparatus," or more specifically, "machine" claims.<sup>10</sup>

13. Moreover, "[w]hen a computer program is recited in conjunction with a physical structure, such as a computer memory, Office personnel should treat the claim as a product claim." MPEP §2106 IV B. 1 (a) (last paragraph). Because claims 23-26, 28, and 29 are also product claims, it is the Examiner's position that Applicants' "medium" claims are "product" claims.

14. Additionally, the Examiner notes that "the PTO and the CCPA acknowledged product-by-process claims as an exception to the general rule requiring claims to define products in terms of structural characteristics." *Atlantic Thermoplastics Co. v. Faytex Corp.*, 970 F.2d 834, 845, 23 USPQ2d 1481, 1490 (Fed. Cir. 1992) (hereinafter "*Atlantic Thermoplastics v. Faytex I*"). Furthermore, the Federal Circuit "acknowledges that it has in effect recognized . . . product-by-process claims as exceptional." *Atlantic Thermoplastics v. Faytex I*, 970 F.2d at 847, 23 USPQ2d at 1491.

Because of this exceptional status, the Examiner has carefully reviewed the claims and it is the Examiner's position that claims 1-10 and 25-29 *do not* contain any product-by-process limitations whether in a conventional format or otherwise. If Applicants disagree with the Examiner, the Examiner respectfully requests Applicants in their next response to expressly point out any product-by-process claim(s) and their limitations so that they may be afforded their exceptional status and treated accordingly. Applicants are reminded that "even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself." *In re Thorpe*, 777 F.2d 695, 697, 227 USPQ 964,

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<sup>10</sup> Products may be either machines, manufactures, or compositions of matter. MPEP §2106 IV

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966 (Fed. Cir. 1985) (citations omitted).<sup>11</sup> Failure by Applicants in their next response to also address this issue in accordance with 37 C.F.R. §1.111(b) or to be non-responsive to this issue entirely will be considered intent by Applicant(s) *not* to recite any product-by-process limitations. Unless expressly noted otherwise by the Examiner, the preceding discussion on product-by-process principles applies to all examined claims currently pending.

15. Functional recitations using the word “for,” “operable” “adapted to,” or other functional terms (*e.g.* see claim 1 which recites “operable to receive status”) have been considered but are given little patentable weight<sup>12</sup> because they fail to add any structural limitations and are thereby regarded as intended use language. A recitation of the intended use in a product claim must result in a structural difference between the claimed product and the prior art in order to patentably distinguish the claimed product from the prior art. If the prior art structure is capable of performing the intended use, then it reads on the claimed limitation. *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) (“The manner or method in which such machine is to be utilized is not germane to the issue of patentability of the machine itself.”); *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). See also MPEP §§ 2114 and 2115. Unless expressly noted otherwise by the Examiner, the claim interpretation principles in this paragraph apply to all examined claims currently pending. By way of example only and if a positive recitation is desired, the Examiner respectfully suggests Applicants actually recite ‘the planning application receives status data’ or similar language.

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B. 2 (a).

<sup>11</sup> See also MPEP §2113.

<sup>12</sup> See *e.g. In re Gulack*, 703 F.2d 1381, 217 USPQ 401, 404 (Fed. Cir. 1983)(stating that although all limitations must be considered, not all limitations are entitled to patentable weight.).

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16. Although Applicants use “means for” in the claim(s) (*e.g.* claim 25 which recites “means for receiving states data”), it is the Examiner’s position that the “means for” phrase(s) do not invoke 35 U.S.C. 112 6<sup>th</sup> paragraph. If Applicants concur, the Examiner respectfully requests Applicants to either amend the claim(s) to remove all instances of “means for” from the claim(s), or to explicitly state on the record why 35 U.S.C. 112 6<sup>th</sup> paragraph should not be invoked.

Alternatively, if Applicants desire to invoke 35 U.S.C. 112 6<sup>th</sup> paragraph, the Examiner respectfully requests Applicants to expressly state their desire on the record. Upon receiving such express invocation of 35 U.S.C. 112 6<sup>th</sup> paragraph, the “means for” phrase(s) will be interpreted as set forth in the *Supplemental Examination Guidelines for Determining the Applicability of 35 USC 112 6<sup>th</sup>*.<sup>13</sup> Failure by Applicants in their next response to also address the 35 U.S.C. 112 6<sup>th</sup> paragraph issues in accordance with 37 C.F.R. §1.111(b) or to be non-responsive to this issue entirely will be considered a desire by Applicants NOT to invoke 35 U.S.C. 112 6<sup>th</sup> paragraph. Unless expressly noted otherwise by the Examiner, the preceding discussion on 35 U.S.C. 112 6<sup>th</sup> paragraph applies to all examined claims currently pending.

#### ***Response to Arguments***

17. Applicant's arguments with respect to the claims have been considered but are moot in view of the new grounds of rejection.

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<sup>13</sup> Federal Register Vol 65, No 120, June 21, 2000.

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18. Because the Examiner inadvertently left out the §112 2<sup>nd</sup> paragraph rejections for at least claims 24 and 25, this Office Action (the “Second Non Final Office Action”) is made non final.

19. Regarding the 35 U.S.C. §112 2<sup>nd</sup> paragraph rejections and “capacity extreme,” Applicants’ arguments have been considered but are not persuasive because the claim is indefinite on its face. “If the scope of the invention sought to be patented is unclear from the language of the claim, a second paragraph rejection will properly lie. *In re Wiggins*, 488 F.2d 538, 179 USPQ 421, 423 (CCPA 1973) (citations and quotations omitted). During ex parte examination, the specification can not be used to overcome a 35 U.S.C. §112 2<sup>nd</sup> paragraph rejection.

20. The Examiner notes that in e.g. claim 1, the prior art panning application need only be capable of performing the claimed function since Applicants presently claim only that the application is “operable” and not operates or similar language.

21. The Examiner has reviewed Applicant’s remaining remarks. While the Examiner agrees that for anticipation, the ‘All Elements Test’ applies, there may nevertheless be unrecognized anticipation. The Examiner therefore respectfully disagrees with Applicants’ position that there can not be unrecognized anticipation. “In sum, [the Federal Circuit’s] precedent does not require a skilled artisan to recognize the inherent characteristic in the prior art that anticipates the claimed invention.” *Schering Corp. v. Geneva Pharmaceuticals, Inc.*, 339 F.3d 1373, 1378, 67 USPQ2d 1664, 1668 (Fed. Cir. 2003). In other words, “[I]nherency is not necessarily coterminous with the knowledge of those of ordinary skill in the art.

Artisans of ordinary skill may not recognize the inherent characteristics or functioning of the prior art.” *Mehl/Biophile Int’l Corp. v. Milgraum*, 192 F.3d 1362, 1365, 52 USPQ2d 1303,

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1305-06 (Fed. Cir. 1999); *Atlas Powder Co. v. Ireco Inc.*, 190 F.3d 1342, 1347, 51 USPQ2d 1943, 1946-47 (Fed. Cir. 1999).

### *Conclusion*

22. References considered pertinent to Applicants' disclosure are listed on form PTO-892.

All references listed on form PTO-892 are cited in their entirety.

23. The following two (2) citations to the Manual of Patent Examining Procedure ("MPEP") apply to this Office Action: MPEP citations to Chapters 100, 200, 500, 600, 700, 1000, 1100, 1300, 1400, 1500, 1700, 1800, 2000, 2100, 2200, 2500, 2600, and 2700 are from the MPEP 8<sup>th</sup> Edition, Rev. 2, May 2004. All remaining MPEP citations are from MPEP 8<sup>th</sup> Edition, August 2001.

24. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Applicants' request for linking the application to Customer No. 38441 is acknowledged. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should Applicants have access problems or other questions on access to the Private PAIR system, please contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

25. In accordance with *In re Lee*, 277 F.3d 1338, 1344-45, 61 USPQ2d 1430, 1434-35 (Fed. Cir. 2002), the Examiner finds that the reference, Production and Inventory Control Handbook, 3<sup>rd</sup> Ed. with James H. Greene as Editor-in-Chief ("Greene") is additional evidence of what is basic knowledge or common sense to one of ordinary skill in this art. First, the

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Examiner finds that Greene provides an introduction to the basics of production and inventory control. In other words, Greene covers production and inventory control in its broadest sense. The Examiner also finds that the reference is a introductory handbook which serves at least professionals, students, and persons designing control systems. The reference is cited in its entirety. In particular, Greene is about planning, controlling, and managing production and inventories through systems and an organization; and applying principles, methods, and models, based on facts, knowledge, forecasts, and predictions to accomplish goals and objectives. Finally, the Examiner finds that Greene includes discussions which are broad enough to include both large and small businesses; covers the process industries as well as the assembly and fabrication industries; covers businesses that produce to order as well as those that ship 'off the shelf,' and concerns itself with distribution inventories as well as manufactured inventory, from the simple manufacturing processes to more complex processes. Because "[w]ell known text books in English are obvious research materials" *In re Howarth*, 654, F.2d 103, 210 USPQ 689, 692 (CCPA 1981), because of the factual findings noted in this paragraph, and after further review of the entire record including the prior art now of record in conjunction with the factors as discussed in MPEP §2141.03 (where practical), the Examiner finds that Greene is primarily directed towards those of low skill in this art. Because Greene is directed towards those of low skill in this art, the Examiner finds that one of ordinary skill in this art must—at the very least—be aware of and understand the knowledge and information contained within Greene.

26. Finally, Applicants are also reminded that patents are written by and for skilled artisans. See *Vivid Technologies, Inc. v. American Science and Engineering, Inc.*, 200 F.3d 795, 804, 53 USPQ2d 1289, 1295 (Fed. Cir. 1999) ("patents are written by and for skilled artisans"). The

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Examiner therefore starts with the presumption that Applicants are skilled artisans who possess at least ordinary skill in the art. Consequently, it is the Examiner's position that because the patent references of record are directed to those with ordinary skill in this art, these references are clear, explicit, and specific as to what they teach. Nevertheless some applicants apparently have difficulty understanding the references. In an effort to maintain compact prosecution, provide due process, and to help these applicants understand the contents of a reference when viewed from the position of one of ordinary skill in this art, Applicants are hereby given actual notice that if after reasonably reading any reference of record, if Applicants can not reasonably understand or if Applicants have difficulty comprehending one or more sentence(s), statement(s), diagram(s), or principle(s) set forth in one or more of the reference(s) of record, Applicants should (in their next appropriately filed response) bring this issue to the attention of the Examiner. In addition to bringing this issue to the attention of the Examiner, and in accordance with 37 C.F.R. §1.111(b), Applicants response must also state *why* they either do not understand or have difficulty comprehending the reference. If after properly receiving (*i.e.* Applicants' response is made of record) both Applicant's request for understanding and the reasons as to *why* the request is made—and assuming the reference is germane to at least one outstanding rejection—the Examiner may either provide a substitute reference, or alternatively, do his best to elucidate the particular sentence(s), statement(s), diagram(s), or principles(s) at issue in a reasonable manner.

27. In accordance with the USPTO's goals of customer service, compact prosecution, and reduction of cycle time, the Examiner has made every effort to clarify his position regarding claim interpretation and any rejections or objections in this application. Furthermore, the Examiner has again provided Applicants with notice—for due process purposes—of his

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position regarding his factual determinations and legal conclusions. The Examiner notes and thanks Applicants for their "Remarks" (beginning on page 13) traversing the Examiner's positions on various points. If Applicants disagree with any additional factual determination or legal conclusion made by the Examiner in this Office Action whether expressly stated or implied,<sup>14</sup> the Examiner respectfully reminds Applicants to properly traverse the Examiner's position(s) in accordance with 37 C.F.R. §1.111(b) in their next properly filed response. By addressing these issues now, matters where the Examiner and Applicants agree can be eliminated allowing the Examiner and Applicants to focus on areas of disagreement (if any) with the goal towards allowance in the shortest possible time. If Applicants have any questions regarding the Examiner's positions or have other questions regarding this communication or even previous communications, Applicants are strongly encouraged to contact Examiner Andrew J. Fischer whose telephone number is (571) 272-6779. If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's immediate supervisor, Alexander Kalinowski, can be reached at (571) 272-6771. The fax number for facsimile responses is now (571) 273-8300.



Andrew J. Fischer  
Primary Examiner  
Art Unit 3627

AJF  
July 20, 2005

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<sup>14</sup> E.g., if the Examiner rejected a claim under §103 with two references, although not directly stated, it is the Examiner's implied position that the references are analogous art.